

ILLINOIS POLLUTION CONTROL BOARD
February 4, 2016

ENVIRONMENTAL RECYCLING AND)
DISPOSAL SERVICES, INC.,)
)
Petitioner,)
)
v.) PCB 16-76
) (Third-Party Pollution Control Facility
WILL COUNTY, ILLINOIS, WILL COUNTY) Siting Appeal)
BOARD, AND WASTE MANAGEMENT OF)
ILLINOIS, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J.D. O’Leary)

On January 19, 2016, Environmental Recycling and Disposal Services, Inc. (ERDS) timely filed a petition (Pet.) asking the Board to review a December 17, 2015 decision of the Will County Board. Will County granted Waste Management of Illinois, Inc. approval for expansion of the Laraway Recycling and Disposal facility, located at 21101 W. Laraway Rd., Elwood, Will County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government approves siting, certain third parties may appeal the local government’s decision to the Board. *See* 415 ILCS 5/40.1(b) (2014); 35 Ill. Adm. Code 107.

In this case, ERDS appeals on the grounds that the proceedings before the Will County Board on the application were fundamentally unfair, that the Will County Board’s conditional approval of the application is not authorized by Section 39.2 of the Act (415 ILCS 5/39.2 (2014)), and that the County Board’s decision was contrary to the manifest weight of the evidence on statutory siting criteria (i) (need), (ii) (public health, safety, and welfare), and (vi) (traffic) (415 ILCS 5/39.2(a) (2014)). Pet. at 2. For the reasons below, the Board accepts the petition for hearing.

THIRD-PARTY APPEAL

Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (2014)) allows third parties to appeal a local government decision granting approval to site a pollution control facility if the third parties participated in the local government’s public hearing and are so located as to be affected by the proposed facility. *See* 415 ILCS 5/40.1(b) (2014); 35 Ill. Adm. Code 107.200(b). The petition

for review must, among other things, specify the grounds for appeal and include a copy of the local government's siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2014); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party's petition is "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40.1(b) (2014); 35 Ill. Adm. Code 107.200(b).

ERDS's petition states that it participated in Will County's public hearings and that it is so located as to be affected by the proposed facility. ERDS specifies the grounds for the appeal and includes a copy of Will County's siting decision. The petition meets the content requirements of 35 Ill. Adm. Code 107.208. ERDS also filed its petition within 35 days after Will County's approved siting.

HEARING AND DECISION DEADLINE

An action before the Board is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board indicates that this action is duplicative or frivolous. The Board accepts ERDS's petition for hearing.

ERDS has the burden of proof. *See* 415 ILCS 5/40.1(b) (2014); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before Will County, except that, if relevant, evidence may be introduced on (1) the local government's jurisdiction over the siting application and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(b) (2014); *Land & Lakes v. IPCB*, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2014)), which only Waste Management of Illinois may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Waste Management of Illinois "may deem the site location approved." 415 ILCS 5/40.1(a) (2014). Currently, the decision deadline is May 18, 2016, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for May 5, 2016.

WILL COUNTY'S RECORD

Will County must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the content and certification requirements of 35 Ill. Adm. Code 107.304, 107.308. "The Certificate must contain an index that lists the documents comprising the record and show the page number upon which they start and end." 35 Ill. Adm. Code 107.308. ERDS must pay to Will County the cost of preparing and certifying the record. 415 ILCS 5/39.2(n) (2014); 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 4, 2016 by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board